

STATE OF MONTANA
BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 17-87:

MONTANA PUBLIC EMPLOYEES)
ASSOCIATION, INC.,)

Complainant,)

FINAL ORDER

vs.)

THE DEPARTMENT OF JUSTICE,)
HIGHWAY PATROL DIVISION,)

Defendant.)

* * * * *

PROCEDURE

Montana Public Employees Association, Inc., filed an unfair labor practice charge with the Board of Personnel Appeals on June 17, 1987. The complainant alleged that the Department of Justice, Highway Patrol Division, violated section 39-31-401(5), MCA, by unilaterally altering a substantial condition of employment (hours of work). The Department's response of June 26, 1987, denied the allegations and requested that the charge be dismissed as untimely.

A hearing was held before hearing examiner Arlyn L. Plowman, following which post-hearing briefs were filed. The hearing examiner, in Findings, Conclusions and Recommended Order dated January 6, 1988, determined the charge was timely filed and that the Department of Justice engaged in an unfair labor practice.

1 The Department of Justice filed Exceptions to the Order
2 on January 25, 1988. The exceptions pertinent to this
3 determination are 1) whether the unfair labor practice charge was
4 filed in a timely manner; and 2) whether the complainant clearly
5 and unequivocally waived its right to bargain during the term of
6 the collective bargaining agreement. Briefs were filed and oral
7 argument heard before the Board of Personnel Appeals on Friday,
8 February 12, 1988.

9 ORDER

10 Upon reviewing the record and considering the briefs and
11 oral arguments, the Board orders as follows:

12 1. The Board affirms all factual findings of the hearing
13 examiner except Finding #11. Finding #11 is deleted in its
14 entirety and replaced with the following:

15 "11. The collective bargaining agreement contains the
16 following waiver, commonly known as a "zipper clause":

17 The parties acknowledge that during
18 negotiations which resulted in this
19 Agreement, each had the unlimited right and
20 opportunity to make demands and proposals
21 with respect to any subject or matter not
22 removed by law from the area of collective
23 bargaining, and that the understandings and
24 agreements arrived at by the parties after
25 the exercise of that right and opportunity
are set forth in this Agreement. There-
fore, the Employer and the Association for
the duration of this Agreement, each
voluntarily and unqualifiedly waives the
right, and each agrees that the other shall
not be obligated to bargain collectively
with respect to any subject or matter
specifically referred to or covered in this
Agreement, or not specifically referred to or

1 covered in this Agreement, even though such
2 subjects or matters may, or may not, have
3 been within the knowledge or contemplation
4 of either or both of the parties at the time
5 they negotiated or signed this Agreement.
6 This Article shall not be construed to in
7 any way restrict the parties from commencing
8 negotiations under the applicable law on any
9 succeeding agreement to take effect upon
10 termination of this Agreement.

11 Article 23 of the Collective Bargaining Agreement."

12 2. The Board affirms Conclusions of Law 1, 2, 3 and 4.

13 3. The Board unanimously affirms the result of Conclusion
14 #5, the unfair labor practice charge was timely filed. However,
15 the rationale behind the Board's conclusion differs significantly
16 from that of the hearing examiner. The discussion of the hearing
17 examiner is replaced with the following discussion:

18 "Pursuant to Section 39-31-404, MCA, a complainant generally
19 has six months from the time of the unfair labor practice in
20 which to file its charge. There are several different tests
21 which can be used to determine when the six month statute of
22 limitations should commence. The test of preference, at least
23 with respect to these facts, is the test under which the statute
24 commences to run upon the receipt of actual notice of the unfair
25 labor practice.

26 "The concept of actual notice is subject to various
27 interpretations. The critical point is when the action which
28 comprises the unfair labor practice becomes "unconditional and
29 unequivocal." Although there are cases to the contrary, NLRB v.
IBEW Local 112, 126 LRM 2292 (CA 9 1987), and American Distri-

1 bating Co. v. NLRB, 715 F.2d 446 (9th Cir. 1983), best exemplify
2 the position of this Board.

3 "NLRB v. IBEW Local 112, supra, questions whether the
4 statute of limitations is triggered when reduction of force cards
5 are mailed or when actual layoffs occur. The Board adopted the
6 date of actual layoff because the ROF cards did not provide
7 unequivocal notice to workers that their rights were being
8 violated. It was not inevitable at the time of the ROF cards
9 were issued that layoffs would occur.

10 "American Distributing Co. v. NLRB, supra, is consistent
11 with IBEW Local 112. It concerns an employer's discontinuation
12 of contributions to the pension trust fund. The employer
13 initially warned during collective bargaining agreement
14 negotiations that when the bargaining agreement expired,
15 contributions would no longer be made. Near the expiration of
16 the bargaining agreement, in February or March, the employer
17 reiterated its stance. Union representatives did not learn until
18 November that employer contributions ceased May 1st. The
19 Administrative Law Judge and the Ninth Circuit found actual
20 notice triggering the six month statute could not occur until
21 after the employer ceased contributing. Therefore, the charge
22 filed in December was timely.

23 "Analogously, actual notice did not occur here until after
24 the first implementation of the leave without pay policy. Prior
25 to that time, the employer's position was revocable. Thus,

1 actual notice occurred when the Highway Patrol Division required
2 the first employee to take a day's leave without pay. The first
3 day of leave without pay was during the first week of January,
4 1987. The charge was filed five and one-half months later, June
5 17, 1987. The charge was timely filed."

6 4. The Board's determination in #5 below that the
7 complainant clearly and unequivocally waived its right to bargain
8 over any subject matter renders Conclusions of Law #6 and #7
9 irrelevant.

10 5. The Board reverses Conclusion of Law #8, regarding
11 whether the complainant waived its right to bargain over the
12 Department of Justice's policy that certain highway patrol
13 officers be required to take three days leave without pay.

14 The hearing examiner's Conclusion of Law #8 is struck and
15 replaced with the following Conclusion of Law #6:

16 "Article 23 of the Collective Bargaining Agreement consists
17 of a waiver of bargaining rights. It is a waiver of the type
18 commonly referred to as a 'zipper clause'. The waiver contains
19 language by which the parties clearly and unambiguously waive
20 their rights to bargain over anything, including compulsory
21 bargaining subjects such as layoffs, hours of work and work
22 schedules.

23 Therefore, the Employer and the Association
24 for the duration of this Agreement, each
25 voluntarily and unqualifiedly waives the
right, and each agrees that the other shall
not be obligated to bargain collectively with
respect to any subject or matter
specifically referred to or covered in this

1 Agreement, or not specifically referred to or
2 covered in this Agreement, even though such
3 subjects or matters may, or may not, have
4 been within the knowledge or contemplation of
5 either or both of the parties at the time
6 they negotiated or signed this Agreement.

7 "The Board is well aware of NLRB, federal appellate and
8 state court decisions requiring precise language specifically
9 waiving a particular right to bargain before finding a waiver of
10 that particular bargaining right. Those jurisdictions do not
11 interpret general waivers such as zipper clauses as waiving
12 specific bargaining rights. We disagree with this
13 interpretation.

14 "Zipper clause waivers like the one at issue here are just
15 as specific. The parties have clearly waived their right to
16 bargain regarding any subject matter, whether specifically
17 referred to in the contract or never considered by either party.
18 A waiver containing language whereby the parties clearly and
19 unambiguously agree to waive any and all bargaining rights should
20 be given effect. State v. Maine State Employees Association, 499
21 A.2d 1228 (1985) and NLRB v. Southern Materials Co., 477 F.2d 15
22 (4th Cir. 1971)."

23 6. Conclusion of Law #9 remains unchanged and becomes
24 Conclusion of Law #7.

25 7. Conclusions of Law #10 and #11 are struck as irrelevant
and unnecessary.

1 8. New Conclusion of Law #8 shall state: "The complainant
2 has failed to prove its case by a preponderance of the
3 evidence."

4 9. New Conclusion of Law #9 shall state: "Since the
5 complainant, in its zipper clause, clearly and unmistakably
6 waived its right to bargain over any matter, including layoffs
7 and reductions in hours, the Department of Justice was not
8 required to engage in bargaining over its decision to impose
9 three days leave without pay on various highway patrolmen.
10 Therefore, no unfair labor practice occurred."

11 10. The Recommended Order of the hearing examiner is struck
12 in its entirety and replaced with the following:

13 "The Unfair Labor Practice Charge No. 17-87, although timely
14 filed, is dismissed as no unfair labor charge occurred."

15 DATED this 23rd day of August, 1988.

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18 BOARD OF PERSONNEL APPEALS

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22 By Alan L. Joselyn
23 Alan L. Joselyn
24 Chairman
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STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 17-87

MONTANA PUBLIC EMPLOYEES
ASSOCIATION, INC.,

Complainant,

vs.

THE DEPARTMENT OF JUSTICE,
HIGHWAY PATROL DIVISION,

Defendant.

FINDINGS; CONCLUSIONS;
AND RECOMMENDED ORDER

* * * * *


INTRODUCTION

A hearing on the above-captioned matter was held on November 2, 1987 in the first floor conference room of the Department of Labor and Industry Building in Helena, Montana. Arlyn L. Plowman was the duly appointed hearing examiner for the Board of Personnel Appeals. The Complainant was represented by attorney David Stiteler. The Defendant was represented by Assistant Attorney General Clay Smith. The parties presented testimony and evidence, cross-examined witnesses and offered argument. Subsequent to the hearing the parties filed post-hearing briefs and the matter was deemed submitted on November 23, 1987.

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1 2. At all relevant times there existed, between the
2 Complainant and Defendant, a collective bargaining agreement
3 covering the terms and conditions of employment for certain
4 highway patrol officers.

5 3. That collective bargaining agreement contained
6 provisions dealing with seniority, layoffs, and a grievance/arbitration
7 procedure culminating in binding arbitration.
8

9 4. Throughout the fiscal years 1985-86 and 1986-87
10 the Department of Justice was subjected to a series of
11 budget reductions. The Highway Patrol Division of the
12 Department of Justice met these budget reductions, in large
13 part, by reducing nonsalary personnel costs and deferring
14 replacement of patrol cars.

15 5. On November 12, 1986 the Governor's office directed
16 further budget reductions.

17 6. Due to concerns about the potential effects of
18 this additional (November 12) budget reduction, the Complainant's
19 executive director, Thomas Schneider, met with
20 the Defendant's administrator, Colonel Robert Landon.
21 During that meeting Schneider and Landon discussed the
22 additional budget reduction and its effect on the highway
23 patrol officers represented by the Complainant, and whether
24 these officers would be spared the required leaves without
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1 pay as had previously been mandated for other Department of
2 Justice employees. Landon told Schneider that his recommen-
3 dation would be that the highway patrol officers represented
4 by the Complainant again be spared from mandatory leaves
5 without pay.

6 7. Subsequent to that meeting the Defendant issued a
7 memorandum on November 24, 1986 requiring, that due to
8 budget reductions, all highway patrol employees take three
9 days leave without pay, one day per month during January,
10 February, and March, 1987.

11 8. For management reasons the Defendant chose to
12 implement the mandatory three days leave without pay in lieu
13 of a reduction in force invoking the seniority and layoff
14 provisions of the collective bargaining agreement.

15 9. The Complainant was not advised of the Defendant's
16 decision to implement the mandatory three days leave without
17 pay prior to the issuance of the November 24, 1986 memoran-
18 dum. The Complainant did not receive a copy of the November
19 24, 1986 memorandum until the following week.

20 10. Schneider and Landon, representatives of the
21 Complainant and Defendant, had discussed the possibility of
22 highway patrol officers being required to take leave without
23 pay. However, prior to the November 24, 1986 memorandum, no
24 bargaining over that possibility occurred, nor was the
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1 Complainant afforded an opportunity to bargain over the
2 mandatory three days leave without pay required by the
3 November 24, 1986 memorandum.

4 11. The collective bargaining agreement contains no
5 clear and unequivocal language wherein the Complainant
6 waived its right to bargain over mandatory leaves without
7 pay. Although, the parties spent considerable time and
8 effort, after the fact, during their 1987 negotiations on
9 this issue; the record does not show that in the parties'
10 prior bargaining the Complainant conscientiously yielded or
11 clearly and unmistakably waived its interest regarding
12 mandatory leaves without pay.

13 12. The Complainant filed a timely grievance alleging
14 that the Defendant's requirement that highway patrol offi-
15 cers take three days leave without pay violated the collec-
16 tive bargaining agreement. That grievance was processed
17 through the grievance/arbitration procedure to arbitration.

18 13. The arbitrator's award was issued June 12, 1987.¹
19 In that award the arbitrator dismissed the Complainant's
20 grievance.

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23 ¹That arbitrator's award along with associated exhibits
24 and post-hearing briefs were submitted and made a part of
25 the record in this matter.

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1 4. Pursuant to Section 39-31-406 MCA the Complain-
2 ant's case must be established by a preponderance of the
3 evidence before an unfair labor practice may be found, Board
4 of Trustees v. State of Montana, 103 LRRM 3090, 604 P.2d 770
5 (1979); See also Indiana Products v. NLRB, 31 LRRM 2490, 202
6 P.2d 613, CA 7 (1953) and NLRB v. Kaiser Aluminum and Chemi-
7 cal Corporation, 34 LRRM 2412, 217 P.2d 366, CA 9 (1954).

8 5. Pursuant to Section 39-31-404 MCA no Notice of
9 Hearing shall be issued upon any unfair labor practice more
10 than six months before the filing of the charge with the
11 Board of Personnel Appeals.

12 The Defendant cites, in its post-hearing brief, a NLRB
13 decision, U. S. Postal Service 271 NLRB 61 (1984), 116 LRRM
14 1417 and argues that the Complainant's complaint ought to be
15 dismissed as untimely. In U. S. Postal Service, Supra, the
16 NLRB focused upon the date of the unlawful act, rather than
17 on the date it's consequences became effective. That Board
18 later reviewed that decision in IATSE Local 659, 276 NLRB 91
19 (1985), 120 LRRM 1135 and U. S. Postal Service, 285 NLRB 98
20 (1987), 126 LRRM 1138. In these decisions the NLRB deter-
21 mined that (six month) limitation period commences when the
22 final adverse employment decision is made and communicated.

23 In any event, the (six month) limitation period does
24 not begin to run until the party filing the charge receives
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1 actual notice that an unfair labor practice has occurred.
2 Notice of the intention to commit an unfair labor practice
3 does not trigger the (six month) limitation period, NLRB v.
4 IBEW Local No. 112 (Fischbach/Lord Electric Company), 126
5 LRRM 2292, CA 9 (1987); American Distributing Company v.
6 NLRB, 115 LRRM 2046, 715 F2d 446, CA 9 (1983).

7 The parties in this matter had within their collective
8 bargaining agreement a grievance/arbitration procedure.
9 Under certain circumstances, were such grievance/arbitration
10 procedures exist, it has been the practice of the NLRB and
11 Board of Personnel Appeals to defer to the griev-
12 ance/arbitration procedure, Collyer Insulated Wire, 192 NLRB
13 150 (1971), 77 LRRM 1931 and Forsman, IAFF Local 436 v.
14 Anaconda-Deer Lodge County, ULP 44-81 (1982).

15 Such a deferral to the grievance/arbitration procedure
16 takes time. The (six month) limitation period should be
17 tolled from the initiation of the dispute resolution process
18 in the grievance/arbitration procedure until that process
19 has reached a finality. See Gause v. North Carolina Ship-
20 ping Association, Inc., 126 LRRM 2913, DC NC (1987).

21 Pursuant to the foregoing, the (six month) limitation
22 period in this instance would not have commenced until the
23 final adverse decision was made and implemented. That
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1 adverse employment decision was not final until the arbitra-
2 tor's award was received.

3 The NLRB decisions in U. S. Postal Service, supra,
4 relate to unfair labor practice charges alleging discrimina-
5 tion and that Board is there making a determination as to
6 the timeliness of charges relating to a single adverse
7 employment action. At issue here is a charge alleging a
8 failure to bargain with continuing violations, NLRB v.
9 White Construction Company, 32 LRRM 2198, 204 F2d 950, CA 5
10 (1953). The (six month) limitation period does not bar
11 unfair labor practice charges alleging continuing viola-
12 tions, Sevako v. Anchor Motor Freight, Inc., 122 LRRM 3316,
13 792 F2d 570 CA 6 (1986); American Mirror Company, 269 NLRB
14 188 (1984), 116 LRRM 1048; Enterprise Products Company, 265
15 NLRB 83 (1982), 112 LRRM 1412.

16 The complaint was filed well within six months of the
17 receipt of the arbitrator's award and within six months of
18 the last day (during March 1987) the affected highway patrol
19 officers were required to take leave without pay. The
20 complaint was filed timely.

21 6. An employer violates its duty to bargain collec-
22 tively in good faith when it institutes a material change in
23 the terms and conditions of employment that are compulsory
24 subjects of bargaining without giving the exclusive
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1 bargaining representative both reasonable notice and an
2 opportunity to negotiate about the proposed change. See
3 Felbro, Inc., (Garment Workers Local 512) v. NLRB, 122 LRRM
4 3113, 795 F2d 705, CA 9 (1986); NLRB v. Carbonex Coal
5 Company, 110 LRRM 2567, 697 F2d 200 CA 10 (1982).

6 Dayoffs are a compulsory subject of bargaining, see
7 NLRB v. Advertisers Manufacturing Company, 125 LRRM 3024, CA
8 7 (1987); NLRB v. Sandpiper Convalescent Center, 126 LRRM
9 2204, CA 4 (1987); NLRB v. United Nuclear Corporation, 66
10 LRRM 2101, 381 F2d 972, CA 10 (1967).

11 Hours of work and work schedules are compulsory sub-
12 jects for bargaining, see Florida Steel v. NLRB, 101 LRRM
13 2671, 235 NLRB 129, CA 4 (1979); Meatcutters v. Jewel Tea,
14 59 LRRM 2376, 381 U. S. 676 (1965); Dow Chemical Company,
15 102 LRRM 1199, 244 NLRB 129 (1979).

16 The Defendant violated it's Section 39-31-401 MCA duty
17 to bargain collectively in good faith with the Complainant
18 when it unilaterally changed the terms and conditions of
19 employment for certain highway patrol officers by requiring
20 that those officers take three days of leave without pay.
21 Further, the Defendant did not afford the Complainant a
22 meaningful opportunity to bargain regarding the requirement
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1 that the affected officers take three days leave without
2 pay.³

3 7. The Montana Collective Bargaining for Public
4 Employees Act at Section 39-31-303(3) reserves to public
5 employers the right to relieve employees from duties because
6 lack of work or funds.

7 While the Montana Collective Bargaining for Public
8 Employees Act reserves to employers the right to relieve
9 employees from duties because of a lack of work or funds,
10 that same Act requires that public employers bargain collec-
11 tively in good faith with the affected employees' bargaining
12 representative regarding the effects of the public employ-
13 er's decision to relieve employees from their duties.

14 8. Waiver of a collective bargaining right may only
15 be established by "clear and unmistakable" evidence that the
16 party intentionally yielded it's right. Equivocal, ambigu-
17 ous language in a bargaining agreement is insufficient to
18 demonstrate waiver, NLRB v. General Tire and Rubber, 122
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21 ³Whether the Defendant's actions constituted a layoff
22 (reduction in force) or a change in work schedule (reduction
23 in hours) is a distinction of little consequence here. It
24 may very well be a distinction without a difference since in
25 either case the end result is the same: both result in a
change involving a compulsorily subject of bargaining with
the affected officers losing work time and earnings.

1 LRRM 3152, 795 F2d 585, CA 6 (1986). Such a waiver will not
2 lightly be inferred in the absence of clear and unequivocal
3 language. Where an employer relies on a purported waiver to
4 establish its freedom unilaterally to change terms and
5 conditions of employment not contained in the collective
6 bargaining agreement, the matter at issue must have been
7 fully discussed and conscientiously explored during negotia-
8 tions and the union must have conscientiously yielded or
9 clearly and unmistakably waived it's interest in the matter,
10 Rockwell International Corporation, 109 LRRM 1366, 260 NLRB
11 153 (1982).

12 The Complainant cannot be held to have waived bargain-
13 ing over a change that was presented as though it was a fact
14 or deed already accomplished, NLRB v. National Car Rental
15 System, 109 LRRM 2832, 672 F2d 1182, CA 3 (1982); Gulf
16 States Manufacturing, Inc., v. NLRB, 113 LRRM 2789, 704 F2d
17 1390, CA 5 (1983).

18 The Complainant had not waived its right to bargain
19 regarding the Defendant's policy that certain highway patrol
20 officers be required to take three days leave without pay.

21 9. The arbitrator's award is dispositive of the
22 contractual dispute and that award stands insofar as it does
23 not conflict with the law, see United Paperworkers Interna-
24 tional Union v. Misco, Inc., 126 LRRM 3113, U. S. Supreme
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1 Court, 12-1-87, 86-651; A T & T Technologies v. C W A, 121
2 LRRM 3329, 475 U.S. 643 (1986); and Postal Workers v. Postal
3 Service, 122 LRRM 2094, 789 F2d 1, CA DC (1986).

4 The arbitrator's award is not dispositive of the
5 allegation that the Defendant committed an unfair labor
6 practice, see Nevins v. NLRB, 122 LRRM 3147, 796 F2d 14, CA
7 2 (1986); Taylor v. NLRB, 122 LRRM 2084, 786 F2d 1516, CA 11
8 (1986); Grand Rapids Die Casting v. NLRB, 126 LRRM 2747, CA
9 6 (1987).

10 Arbitration following an employer's effectuation of a
11 change in a term or condition of employment does not serve
12 as a substitute for bargaining over whether such a change
13 should be implemented in the first place, NLRB v. Merrill
14 and Ring, Inc., 116 LRRM 2221, 731 F2d 605, CA 9 (1984).

15 10. Pursuant to Section 39-31-406 MCA 1f, upon the
16 preponderance of the testimony taken, the Board is of the
17 opinion that the Defendant named in the complaint has
18 engaged in an unfair labor practice it shall state its
19 findings and issue an order requiring the Defendant to cease
20 and desist from the unfair labor practice and to take such
21 affirmative action as will effectuate the policies of the
22 Montana Collective Bargaining for Public Employees Act.

23 11. A remedy or affirmative action cannot be fashioned
24 on the basis of an assumption as to what the Complainant and
25

1 Defendant would have agreed to absent the Defendant's
2 failure to bargain in good faith, Gulf States Manufacturing,
3 Inc., v. NLRB, 114 LRRM 2727, 715 F2d 1020, CA 5 (1983).

4 In developing remedies for specific situations there
5 must be an attempt to create a restoration of the situation
6 as nearly as possible, to that which would have obtained but
7 for the unfair labor practice (status quo ante); NLRB v.
8 Keystone Consolidated Industries, 107 LRRM 3143, 653 F2d
9 304, CA 7 (1981); Southwest Forest Industries, 121 LRRM
10 1158, 278 NLRB 31 (1986); St. John's General Hospital v.
11 NLRB, 125 LRRM 3463, CA 3 (1987).

12 In view of the Defendant's violations of its duty to
13 bargain collectively in good faith, the Defendant must
14 restore the situation to status quo ante. In order to do so,
15 the Defendant must make the affected highway patrol officers
16 whole and then, bargain collectively in good faith with the
17 Complainant regarding the effects of any decision to relieve
18 employees, represented by the Complainant, from their
19 duties.

20 RECOMMENDED ORDER

21 It is hereby ordered that after this Order becomes
22 final, the Defendant, Department of Justice, Highway Patrol
23 Division, it's officers, agents, and representatives shall:
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1 1. Cease and desist from refusing to bargain collec-
2 tively in good faith with the Complainant as to wages,
3 hours, and other conditions of employment for certain
4 highway patrol officers for whom the Complainant is the
5 recognized collective bargaining representative.

6 2. Cease and desist from unilaterally changing the
7 terms and conditions of employment, which are compulsory
8 subjects of bargaining, for certain highway patrol officers
9 for whom the Complainant is the recognized collective
10 bargaining representative.

11 3. The Defendant must take affirmative action to
12 effectuate the purposes of the Montana Collective Bargaining
13 for Public Employees Act and restore the status quo ante;

14 a) rescind the unilateral action which
15 required that certain officers of the
16 Highway Patrol, for whom the Complainant
17 was and is the recognized Collective
18 Bargaining Representative, take three
19 days leave without pay;

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21 b) make whole those officers of the Highway
22 Patrol, for whom the Complainant was and
23 is the recognized Collective Bargaining
24 Representative, and who were required to
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1 take three days leave without pay as a
2 result of the Defendant's unilateral
3 action in violation of the Defendant's
4 duty to bargain collectively and in good
5 faith;

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7 c) such highway patrol officers are to be
8 made whole by repaying them for all lost
9 wages and benefits they would have
10 received had they not been required to
11 take three days leave without pay.

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13 4. Once the status quo ante has been restored the
14 Defendant shall grant the Complainant a meaningful
15 opportunity to bargain collectively regarding the effects of
16 any decision to relieve highway patrol officers, represented
17 by the Complainant, from their duties.

18 5. The Defendant shall notify this Board in writing
19 within twenty (20) days what steps have been taken to comply
20 with this Order.

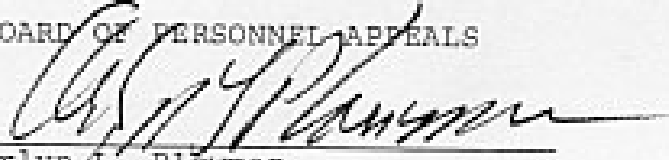
21 SPECIAL NOTICE

22 Exceptions to these Findings and Conclusions and this
23 Recommended Order may be filed within twenty (20) days of
24 service thereof. If no exceptions are filed the Recommended
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1 Order shall become the Final Order of the Board of Personnel
2 Appeals. Address exceptions to the Board of Personnel
3 Appeals, P. O. Box 1728, Helena, MT 596024.

4 Dated this 1st day of January, 1988.

6 BOARD OF PERSONNEL APPEALS

7 
8 Arlyn L. Plowman
9 Hearing Examiner

10 CERTIFICATE OF MAILING

11 The undersigned does certify that a true and correct
12 copy of this document was served upon the following on the
13 6th day of January, 1988, postage paid and addressed as
follows:

14 David Stiteler, Attorney at Law
15 Montana Public Employees Association
16 P. O. Box 5600
17 Helena, MT 59604-5600

18 Clay Smith
19 Assistant Attorney General
20 State of Montana
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